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5 **UNITED STATES DISTRICT COURT**
6 **NORTHERN DISTRICT OF CALIFORNIA**

7 Case No: 5:20-cv-00354-VKD

8 PETER STROJNIK,

9 Plaintiff,

10 vs.
11 R.F. WEICHERT V, INC. dba
12 JABBERWOCK INN

13 Defendant.

14 **SECOND AMENDED
15 COMPLAINT**

- 1 **1. Americans with Disabilities
Act**
- 2 **2. Discrimination in Public
Accommodations (State
Law)**
- 3 **3. Negligence**

16 **JURY TRIAL REQUESTED**

17 1. Plaintiff brings this action pursuant to the (1) Americans with Disabilities Act, 42
18 U.S.C. §12101 *et seq.* and corresponding regulations, 28 CFR Part 36 and Department
19 of Justice Standards for Accessible Design (“ADA”), (2) California Unruh Civil
20 Rights Act, California Civil Code § 51, 52 (“Unruh”) (3) the California Disabled
Persons Act (“DPA”) and (4) common law of negligence per se.

21 **PARTIES**

22 2. Plaintiff Peter Strojnik is a veteran and a disabled person as defined by the ADA and
23 DPA.

24 3. Plaintiff is a single man currently residing in Maricopa County, Arizona. Plaintiff is
25 disabled as defined in the 2008 ADA Amendment Act and 28 C.F.R. 36.105 by virtue
26 of (i) prostate cancer and genitourinary impairment, (ii) renal cancer, (iii) severe right-
27 sided neural foraminal stenosis with symptoms of femoral neuropathy, (iv)
28 degenerative right knee (replaced with a prosthesis), (v) degenerative shoulders and

1 limitation on the use of both shoulders, and attendant impairment of elbows and wrists
2 to reach and twist, (vi) pleurisy, (vii) severed 4th and 5th digits on left hand, reattached
3 with limited utility, (viii) hyper blood pressure. Plaintiff has been declared as disabled
4 by the Arizona Department of Transportation pursuant to doctor's report of disability.
5 4. Plaintiff's Impairments Substantially Limit Related¹ Major Life Activities: At all
6 times relevant hereto, Plaintiff suffered from the musculoskeletal impairments
7 constituting ADA "disability" that substantially limit major life activities: (i) Severe
8 right and left-sided neural foraminal stenosis with symptoms of femoral neuropathy
9 substantially limits the major life activities of walking, standing and bending,
10 climbing stairs, pushing, kicking and other life activities. (ii) Missing right knee with
11 or without regard to ameliorative effects of mitigating measures of prosthetic
12 replacement knee substantially limits major life activities of walking, standing and
13 bending, climbing stairs, pushing, kicking and other life activities. (iii) Limitation on
14 the use of both shoulders, elbows and wrists substantially limits the major life
15 activities of holding and grasping, such as handlebars or handrails, pushing open
16 doors with a force greater than 5 lbs, twisting the wrist and using ball-type door
17 hardware. (iv) Severed 4th and 5th digits on the left hand, reattached with partially
18 frozen 2nd joint on 4th finger and completely frozen 3rd joint on 5th digit substantially
19 limit the major life activities of holding and grasping, such as handlebars or handrails,
20 pushing open doors, twisting the wrist as in using ball-type door hardware. (v)
21 Pleurisy, when active, substantially limit the major life activity of breathing which in
22

23 ¹ **Relationship between ADA disability and a major life activity - causation:** "Where
24 the barrier is *related* to the particular plaintiff's disability, an encounter with the barrier
25 necessarily injures the plaintiff by depriving him of full and equal enjoyment of the
26 facility". *Chapman* at n. 4, quoting to *Doran*, 524 F.3d at 1044 at n. 7 (referencing 42
27 U.S.C. §12182(a)) (emphasis supplied). The barrier, however, need not "prevent, or
28 significantly or severely restrict, the individual from performing a major life activity".
28 C.F.R. 36.105(d)(v) ("An impairment does not need to prevent, or significantly or
severely restrict, the individual from performing a major life activity in order to be
considered substantially limiting.")

1 turn substantially limit life activities of walking, sanding, bending, climbing stairs,
2 kicking, opening doors, holding and grasping, such as handlebars or handrails,
3 pushing open doors, twisting the wrist as in using ball-type door hardware. (vi) Hyper
4 blood pressure substantially limits Plaintiff's major life activity of exerting any
5 physical activity. (vii) Renal cancer limits Plaintiff's ability to twist and bend the
6 abdominal area.

7 5. Plaintiff alleges that that a determination of whether an impairment substantially
8 limits a major life activity must be made without regard to the ameliorative effects of
9 mitigating measures such as medications or prosthetics. 42 U.S.C. §12101 (4)(E)(i).
10 *See also See Rohr v. Salt River Project Agricultural Improvement and Power District,*
11 555 F.3d 850, 21 A.D. Cases 964 (9th Cir. 02/13/2009) (Impairments are to be
12 evaluated in their unmitigated state.) *Accord J.D. v. Colonial Williamsburg*
13 *Foundation*, 18-1725 (4th Cir. 2019) (citing to *Rohr*).
14 6. Plaintiff further alleges that “[a]n impairment that is episodic or in remission is
15 a disability if it would substantially limit a major life activity when active”. 42 U.S.C.
16 §12101 (4)(D).
17 7. Plaintiff is disabled as defined in the 2008 ADA Amendment Act and 28 C.F.R.
18 36.105 and requires the use of a wheelchair as defined.
19 8. When traveling, Plaintiff ferries the wheelchair as an assistive device in his car either
20 in the trunk or behind the front passenger side, depending on luggage distribution:



1 9. When traveling, Plaintiff ferries a cane as an assistive device.
2
3 10. Plaintiff has been declared permanently disabled by the Arizona Department of Motor
4 Vehicles:



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10 11. The permanent disability placard grants Plaintiff the right to use properly configured
11 parking spaces and properly configured passenger loading zones at hotels and other
12 public accommodations.
13
14 12. Plaintiff is disability as defined in 28 C.F.R. 36.105(a)(1)(i), (ii) and (iii).
15
16 13. Defendant, owns, operates leases or leases to a lodging business ("Hotel") located at
17 598 Laine St., Monterey, CA 93940 which is a public accommodation pursuant to 42
18 U.S.C. § 12181(7)(A) and Unruh.

JURISDICTION

19
20 14. District Court has jurisdiction over this case or controversy by virtue of 28 U.S.C. §§
21 28-1331 and 42 U.S.C. § 12188 and 28 U.S.C. § 1367.
22
23 15. Plaintiff brings this action as a private attorney general who has been personally
24 subjected to discrimination on the basis of his disability, *see* 42 U.S.C.12188 and 28
25 CFR §36.501.
26
27 16. This Court has continuing subject matter jurisdiction by virtue of, *inter alia*,
28 Plaintiff's claim for equitable nominal damages.
28 17. Venue is proper pursuant to 28 U.S.C. § 1391.
28
29 18. The ADAAG violations in this Complaint relate to barriers to Plaintiffs mobility.
30 These violations impairs Plaintiff's full and equal access to the Hotel which, in turn,

1 constitutes discrimination satisfying the “injury in fact” requirement of Article III of
2 the United States Constitution.

3 19. Plaintiff is deterred from visiting the Hotel based on Plaintiff’s knowledge that the
4 Hotel is not ADA or State Law compliant as such compliance relates to Plaintiff’s
5 disability.

6 a. Plaintiff is retired and spends his retirement years traveling for recreation, pleasure
7 and ADA testing.
8 b. Plaintiff has travelled and lodged in California over 200± times.
9 c. Just since January 23, 2019, Plaintiff travelled to California and lodged and/or
visited there as follows:

10 i. 2019-01-23 – San Diego
11 ii. 2019-02-16-17 – Solvang
12 iii. 2019-03-14-17 – Anaheim
13 iv. 2019-04-05 – Santa Barbara
14 v. 2019-04-06 – Santa Clara
15 vi. 2019-04-07 – Carmel
16 vii. 2019-04-16 – Healdsburg
17 viii. 2019-04-17 – Calistoga
18 ix. 2019-04-18 – Napa
19 x. 2019-05-20 – La Jolla
20 xi. 2019-05-21 – San Diego
21 xii. 2019-05-22 – Sorento Valley
22 xiii. 2019-06-05 – Bakersfield
23 xiv. 2019-06-06 – Redding
24 xv. 2019-06-07 – Sacramento
25 xvi. 2019-06-07 – Fresno and Visalia
26 xvii. 2019-07-25 – Coronado
27 xviii. 2019-11-22 – Ventura
28 xix. 2019-11-23 – Burlingame
xx. 2019-11-24 – Napa
xxi. 2019-11-25 – Beverly Hills
xxii. 2019-12-10 - San Diego
xxiii. 2020-01-24 – San Diego
xxiv. 2020-02-09 – Paso Robles
xxv. 2020-02-10 – Palo Alto
xxvi. 2020-02-11 – Pasadena
xxvii. 2020-02-20 – San Diego
xxviii. 2020-02-09 – Paso Robles
xxix. 2020-02-10 – Palo Alto
xxx. 2020-02-11 – Monrovia – Pasadena

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2 d. Plaintiff prefers traveling by car.

3 e. Prior to the spread of COVID-19, Plaintiff travelled to California's Wine country
4 on the average two times per year.

5 f. While traveling by car, Plaintiff rests at interim locations such as Monterey.

6 g. Plaintiff visited Defendant's Hotel on September 21, 2020 and became enamored
7 with its nostalgic architecture and peaceful atmosphere.

8 h. Plaintiff has specific plans to visit Defendant's hotel on the next visit to
9 California's Wine Country in June of 2021, provided that Plaintiff is assured that
10 the Hotel is ADA accessible to mobility impaired individuals such as Plaintiff.

11 i. Plaintiff intends to visit Defendant's hotel in particular because of its melancholy
12 appearance, nostalgic architecture and peaceful atmosphere.

13 j. Plaintiff's intent to visit Defendant's Hotel in June of 2021 as the interim location
14 to California's Wine Country based on the diminishing number of California wine
15 stock at Plaintiff's residence which is reaching a critical stage because of current
16 travel restrictions.

17 k. Plaintiff is deterred, however, from visiting the Hotel if the ADA violations remain
18 because he would again experience – as he did on September 21, 2020 – lack of
19 access.

20 l. Plaintiff visited the Hotel in the past, he has actual knowledge of the barriers to
21 accessibility at the Hotel, he prefers to stay at the Hotel because of its melancholy
22 appearance, nostalgic architecture and peaceful atmosphere, and would return
23 there if it were ADA compliant.

24 m. Plaintiff has visited the Hotel on a prior occasion, the Hotel is conveniently located
25 en route to Napa where he plans to travel on the established bi-yearly schedule.

26 20. Plaintiff intends to visit Defendant's Hotel at a specific time when the Defendant's
27 noncompliant Hotel becomes fully compliant with ADAAG; just as a disabled
28 individual who intends to return to a noncompliant facility suffers an imminent injury
from the facility's existing or imminently threatened noncompliance with the ADA, a

1 plaintiff who is deterred from patronizing a hotel suffers the ongoing actual injury of
2 lack of access to the Hotel.

3

COUNT ONE
Violation of Plaintiff's Civil Rights under the ADA

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5 21. Plaintiff realleges all allegations heretofore set forth.

6 22. By virtue of his disability, Plaintiff requires an ADA compliant lodging facility
7 particularly applicable to his mobility, both ambulatory and wheelchair assisted.

8 23. Plaintiff intended to visit the area in the vicinity of Defendant's Hotel and therefore
9 reviewed hotel booking websites for disclosures mandated by 28 C.F.R. 36.302(e).

10 24. Plaintiff lodged in the vicinity of Defendant's hotel at Defendant's competitor's
11 lodging. Defendant's competitor's hotel was replete with accessibility barriers and,
12 therefore, Plaintiff visited Defendant's hotel to determine if it would be suitable for
future lodging.

13 25. Plaintiff learned that not only did Defendant's hotel violate booking websites
14 disclosures pursuant to 28 C.F.R. 36.302(e), but it was also replete with accessibility
15 barriers all of which Plaintiff documented with website screenshots and documentary
16 photographs as follows:

17

ACCESSIBILITY BARRIERS PERSONALLY ENCOUNTERED BY PLAINTIFF
ON 2020-09-21-22

18

19 The below accessibility barriers limit plaintiff's full and equal enjoyment of the
20 facility as each relates to plaintiff's disabilities in their mitigated or unmitigated states.

21

No accessibility information on hotels.com booking website	This barrier violates 28 C.F.R. 36.302(e)(1)(ii). Barrier denied Plaintiff full and equal access by failing to identify and describe accessible features in the hotel and guest rooms in enough detail to reasonably permit Plaintiff to assess independently whether the hotel or guest room meets his mobility related accessibility needs described in ¶¶2-12 above.
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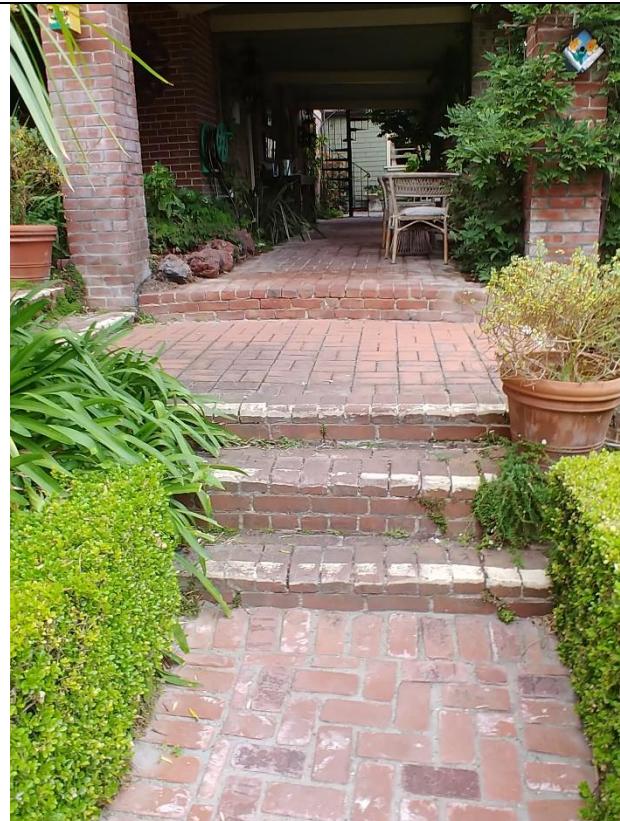
1 2 3 4 5 6 7	<p>No accessibility information on jabberwockinn.com booking website</p>	<p>This barrier violates 28 C.F.R. 36.302(e)(1)(ii). Barrier denied Plaintiff full and equal access by failing to identify and describe accessible features in the hotel and guest rooms in enough detail to reasonably permit Plaintiff to assess independently whether the hotel or guest room meets his mobility related accessibility needs described in ¶¶2-12 above.</p>
8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	 <p>No Accessible Route from Street: This violates Standards at §206.2.1. This violation relates to Plaintiff's impairments which substantially limit his ability to walk, a major life activity. Because of Plaintiff's substantial limitation of walking, Declarant suffers an injury by not being able to ingress and egress the property from and to public street or walkway.</p>	



Inaccessible route to entry with no signage to accessible route: This violates Standard §402. The violation relates to Plaintiff's impairments which substantially limit his ability walk, a major life activity. Because of Plaintiff's substantial limitation of walking, Plaintiff uses a wheelchair. When encountering barriers as the one documented above, Plaintiff is unable to access the entrance.



Inaccessible route to entry with no signage to accessible route: This violates Standard §402. The violation relates to Plaintiff's impairments which substantially limit his ability walk, a major life activity. Because of Plaintiff's substantial limitation of walking, Plaintiff uses a wheelchair. When encountering barriers as the one documented above, Plaintiff is unable to access the entrance.



Inaccessible route to entry with no signage to accessible route: This violates Standard §402. The violation relates to Plaintiff's impairments which substantially limit his ability walk, a major life activity. Because of Plaintiff's substantial limitation of walking, Plaintiff uses a wheelchair. When encountering barriers as the one documented above, Plaintiff is unable to access the entrance.



Improperly configured handrails. This violates Standards at §505.7. This violation relates to Plaintiff's impairments which substantially limit his ability climb stairs and grasping, both major life activity. This violation relates to Plaintiff's disabilities because the support provided by non-compliant handrails significantly impact his ability to grasp them for support.



Lack of Handrails on Ramp: This violates Standards at §505.1. This violation relates to Plaintiff's impairments which substantially limit his ability to negotiate sloped walkways, a major life activity. This violation relates to Plaintiff's disabilities because the lack of handrail support significantly impact his ability to perform a major life activity of walking up a ramp.

26. The ADA and Unruh accessibility violations described in the preceding paragraph relate to Plaintiff's disabilities and interfere with Plaintiff's full and complete enjoyment of the Hotel; for the details of the relation between Plaintiff's disabilities and ADAAG violations, Plaintiff incorporates the table in ¶6 above.

27. The removal of accessibility barriers listed above is readily achievable.
28. As a direct and proximate result of ADA Violations, Defendant's failure to remove accessibility barriers prevented Plaintiff from equal access to the Defendant's public accommodation.

WHEREFORE, Plaintiff prays for all relief as follows:

- A. Relief described in 42 U.S.C. §2000a – 3; and
- B. Relief described in 42 U.S.C. § 12188(a) and (b) and, particularly -
- C. Injunctive relief order to alter Defendant’s place of public accommodation to make it readily accessible to and usable by ALL individuals with disabilities; and

1 D. Requiring the provision of an auxiliary aid or service, modification of a
2 policy, or provision of alternative methods, to the extent required by
3 Subchapter III of the ADA; and
4 E. Equitable nominal damages; and
5 F. For costs, expenses and attorney's fees; and
6 G. All remedies provided for in 28 C.F.R. 36.501(a) and (b).

7

COUNT TWO
(Violation of the California Unruh Civil Rights Act, Cal. Civ. Code §§51, 52)

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9 29. Plaintiff realleges all allegations heretofore set forth.

10 30. Defendant has violated the Unruh by denying Plaintiff equal access to its public
11 accommodation on the basis of his disability as outlined above.

12 31. Unruh provides for declaratory and monetary relief to "aggrieved persons" who suffer
13 from discrimination on the basis of their disability.

14 32. Plaintiff has been damaged by the Defendant's non-compliance with Unruh and is
15 thereby aggrieved.

16 33. Pursuant to Cal Civ. Code §52, Plaintiff is further entitled to such other relief as the
17 Court considers appropriate, including monetary damages in an amount to be proven
18 at trial, but in no event less than \$4,000.00 per encounter with each barrier to
19 accessibility.

20 34. Pursuant to Unruh, Plaintiff is entitled to costs and expenses in an amount to be proven
21 at trial.

22 WHEREFORE, Plaintiff demands judgment against Defendant as follows:

23 a. A Declaratory Judgment that at the commencement of this action Defendant was
24 in violation of the specific requirements of Unruh; and
25 b. Irrespective of Defendants "voluntary cessation" of the ADA violation, if
26 applicable, a permanent injunction pursuant to Unruh which directs Defendant to
27 take all steps necessary to bring its accommodation into full compliance with the

1 requirements set forth in the Unruh, and its implementing regulations, so that the
2 Hotel facilities are fully accessible to, and independently usable by, disabled
3 individuals, and which further directs that the Court shall retain jurisdiction for a
4 period to be determined after Defendant certifies that its facilities are fully in
5 compliance with the relevant requirements of the Unruh to ensure that Defendant
6 has adopted and is following an institutional policy that will in fact cause
7 Defendant to remain fully in compliance with the law; and

8 c. Irrespective of Defendants “voluntary cessation” of the ADA violation, if
9 applicable, the payment of costs of suit; and

10 d. Order closure of the Defendant’s place of public accommodation until Defendant
11 has fully complied with the Unruh; and

12 e. For damages in an amount no less than \$4,000.00 per encounter with barrier; and

13 f. For treble damages pursuant to Cal Civ. Code. §3345.

14 g. The provision of whatever other relief the Court deems just, equitable and
15 appropriate.

16

17 **COUNT THREE**

18 **(Violation of the California Disabled Persons Act, Cal. Civ. Code §§54-54.3)**

19 35. Plaintiff realleges all allegations heretofore set forth.

20 36. Defendant has violated the DPA by denying Plaintiff equal access to its public
21 accommodation on the basis of his disability as outlined above.

22 37. The DPA provides for monetary relief to “aggrieved persons” who suffer from
23 discrimination on the basis of their disability.

24 38. Plaintiff has been aggrieved by the Defendant’s non-compliance with the DPA.

25 39. Pursuant to the DPA, Plaintiff is further entitled to such other relief as the Court
26 considers appropriate, including monetary damages in an amount to be proven at trial,
27 but in no event less than \$1,000.00. Cal. Civ. Code § 54.3.

1 40. Pursuant to the DPA, Plaintiff is entitled to costs in an amount to be proven at trial.
2 Cal. Civ. Code § 54.3.

3 WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- 4 a. A Declaratory Judgment that at the commencement of this action Defendant was
5 in violation of the specific requirements of Unruh; and
- 6 b. Irrespective of Defendants “voluntary cessation” of the ADA violation, if
7 applicable, a permanent injunction pursuant to Unruh which directs Defendant to
8 take all steps necessary to bring its facilities into full compliance with the
9 requirements set forth in the Unruh, and its implementing regulations, so that the
10 facilities are fully accessible to, and independently usable by, disabled individuals
11 as required by law, and which further directs that the Court shall retain jurisdiction
12 for a period to be determined after Defendant certifies that its facilities are fully in
13 compliance with the relevant requirements of the Unruh to ensure that Defendant
14 has adopted and is following an institutional policy that will in fact cause
15 Defendant to remain fully in compliance with the law; and
- 16 c. Irrespective of Defendants “voluntary cessation” of the ADA violation, if
17 applicable, the payment of costs of suit; and
- 18 d. Order closure of the Defendant’s place of public accommodation until Defendant
19 has fully complied with the DPA; and
- 20 e. For damages in an amount no less than \$1,000.00 per violation per encounter; and
- 21 f. For treble damages pursuant to Cal Civ. Code. §3345.
- 22 g. The provision of whatever other relief the Court deems just, equitable and
23 appropriate.

24 **COUNT FOUR**

25 Negligence

26 41. Plaintiff realleges all allegations heretofore set forth.

27 42. Defendant owed Plaintiff a duty to remove ADA accessibility barriers so that Plaintiff
28 as a disabled individual would have full and equal access to the public
accommodation.

1 43. Defendant breached this duty.

2 44. Defendant's knowing, and intentional discrimination has worked counter to our

3 Nation's goals enumerated in 42 U.S.C. 12101(a), causing Plaintiff damage.

4 45. By engaging in negligent conduct described herein, Defendant engaged in intentional,

5 aggravated and outrageous conduct.

6 46. Defendant either intended to cause injury to Plaintiff or defendant consciously

7 pursued a course of conduct knowing that it created a substantial risk of significant

8 harm to Plaintiff.

9 47. Defendant is liable to Plaintiff for punitive damages in an amount to be proven at trial

10 sufficient, however, to deter this Defendant and others similarly situated from

11 pursuing similar acts.

12 **WHEREFORE**, Plaintiff prays for relief as follows:

13 A. For finding of negligence; and

14 B. For damages in an amount to be proven at trial; and

15 C. For punitive damages to be proven at trial; and

16 D. For such other and further relief as the Court may deem just and proper.

17 **REQUEST FOR TRIAL BY JURY**

18 Plaintiff respectfully requests a trial by jury in issues triable by a jury.

19 DATED this 26th day of January, 2021.

20 **PETER STROJNIK**



21 _____
Plaintiff

22 The original ECF filed this 26th day of January 2021 thence distributed by PACER.

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